

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Gerald L.,

Plaintiff,

V.

Kilolo Kijakazi, Acting Commissioner of
Social Security,

Defendant.

Case No. 20-cv-01352 (SRN/TNL)

ORDER

Edward C. Olson, Disability Attorneys of Minnesota, 331 Second Avenue South, Suite 890, Minneapolis, MN 55401; and Meredith E. Marcus, Daley Disability Law PC, 601 West Randolph Street, Suite 300, Chicago, IL 60661, for Plaintiff.

Chris Carillo, Special United States Attorney, Office of the General Counsel, Social Security Administration, 1301 Young Street, Mailroom 104, Dallas, TX 75202, for Defendant.

SUSAN RICHARD NELSON, United States District Judge

This matter is before the Court on Defendant’s Response [Doc. No. 23] to United States Magistrate Judge Tony N. Leung’s June 9, 2021 Report and Recommendation [Doc. No. 22] (“R&R”). In this action, Plaintiff seeks judicial review of the Social Security Administration’s denial of Plaintiff’s claim for disability insurance benefits. The Social Security Act imposes a sixty-day limitations period on such appeals. *See* 42 U.S.C. § 405(g). Prior to filing his Complaint, Plaintiff sought an extension of time to file this action, but the Appeals Council did not initially act on Plaintiff’s request. Plaintiff filed his Complaint on June 11, 2020—outside of the sixty-day limitations period—and Defendant

moved to dismiss the Complaint as untimely. On June 9, 2021, Magistrate Judge Leung found that equitable tolling applied, and therefore recommended that Defendant's motion be denied. Subsequently, Defendant learned that on April 28, 2021—after the motion to dismiss was briefed but before the magistrate judge issued the R&R—the Appeals Council had granted Plaintiff's extension request, rendering the Complaint timely. (*See* Response, Ex. 2.) Defendant therefore requests that the Court find the R&R moot, and permit Defendant to withdraw its motion.

The district court reviews de novo those portions of the R&R to which a specific objection is made and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *accord* D. Minn. L.R. 72.2(b). Because the Appeals Council has granted Plaintiff's request for an extension of time to file his Complaint, the Court finds that this action was timely filed, and that the R&R's application of equitable tolling is moot. Accordingly, the Court adopts the R&R's recommendation that the Motion to Dismiss be denied, but on the basis of the extension—rather than equitable tolling.

For the foregoing reasons, and based on the submissions and the entire file and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The Report and Recommendation [Doc. No. 22] is **ADOPTED as modified** herein; and
2. Defendant's Motion to Dismiss [Doc. No. 12] is **DENIED**.

IT IS SO ORDERED.

Dated: July 20, 2021

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge